

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2501 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KESHRISINH HIRSINH CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR SB NANAVATI for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/09/96

ORAL JUDGMENT

Heard Shri Nanavati and perused the Special Civil Application. The petitioner has made a challenge to the order dated 31st August 1979 made by District Superintendent of Police, Mehsana, annexure 'D', and the order of corrigendum dated 29th October 1979 passed by the successor District Superintendent of Police and confirmed in the revision by respondents No.1, 2 and 3. Further order has been challenged by the petitioner

refusing to allow the petitioner to cross efficiency bar.

2. Two fold contentions has been made by the learned counsel for the petitioner. The first contention is made that double penalty has been given to the petitioner for one misconduct. Under the order dated 31st August 1979, the petitioner was ordered to be reverted from the post of Head Constable Gr.I to Gr.II and under the order dated 29th October 1979, his pay has been reduced from Rs.340/- p.m. to Rs.296/- p.m. for a period of two years.

3. I do not find any substance in this contention of the learned counsel for the petitioner. When the petitioner has been ordered to be reverted back to the post of Head Constable Gr.II, his pay should be fixed in the pay scale of lower post and consequential results thereof his pay may be reduced. But the order dated 29th October 1979 has been made by the respondent without giving any notice or opportunity of hearing to the petitioner. The order dated 29th October 1979 should have been passed after giving the petitioner a notice and opportunity of hearing so that he would have been in a position to say what his pay should be fixed on the lower post of Head Constable Gr.II on his reversion from the higher post Gr.I.

4. The next contention made by the learned counsel for the petitioner is that the petitioner was not allowed to cross efficiency bar under the order dated 6th March 1978 and again under the order dated 1.6.81 and both the orders are illegal as the same have been made in violation of principles of natural justice. So far as the challenge to the first order dated 6.3.78 is concerned, the same deserves to be dismissed only on the ground of delay and laches. The petitioner has not given any satisfactory reason for delay in approaching this Court against the said order after more than four years. The order has been made in March 1978 whereas this petition has been filed in the year June 1982. The second order not allowing the petitioner to cross efficiency bar is dated 1st June 1981 and that does not suffer from vice of delay and laches. The respondent has not come up with the case that the order dated 1.6.81 has been passed after giving notice and opportunity of hearing to the petitioner.

3. In the result, this writ petition succeeds in part. The order dated 1.6.81 annexure 'G' is set aside and the respondent D.S.P., Mehsana, is directed to pass the order afresh after giving notice and opportunity of hearing to the petitioner. The order dated 29th October

1979 annexure 'E' is also set aside. The D.S.P., Mehsana is at liberty to pass a fresh order in this regard and the matter is sent back to the concerned officer with direction to make the appropriate order after giving a notice and opportunity of hearing to the petitioner. The petitioner by now would have retired from the services and as such it is expected of the D.S.P. to pass appropriate orders within a reasonable time, say within three months from the date of receipt of representation in this respect, if any made by the petitioner, within a period of one month from the date of receipt of certified copy of this order. In case no representation is made against both the orders for passing a fresh order by the petitioner within a stipulated period as ordered above, this Special Civil Application shall stand dismissed automatically. Rule is disposed of accordingly with no order as to costs.

.....

(sunil)